

MEMORANDUM OF LAW

DATE: November 5, 1985

TO: Jack McGrory, Labor Relations Assistant

FROM: City Attorney

SUBJECT: Student Career Introduction Program

You have asked this office to review the "Student Career Introduction Program" proposed in an August 29, 1985 memorandum from the Mayor to the City Council. Specifically, you asked us to comment on a concept which would require contract consultants hired by the City to provide student intern positions for "minority youth" as the condition of a contract with the City.

The program concept, as described in the Mayor's memorandum and supporting documents, requires the consultants to place students recommended by the Gifted and Talented Program of the San Diego City School District with their company. During this internship, the students will be considered employees of the City School District and be paid minimum wage with funds allocated by

the State of California under the "8%" set aside monies of the Job Training Partnership Act (JTPA). It is expected that at the end of the program the consultants will retain the student interns as employees if their experience has been satisfactory. According to the information provided, the criteria for selection of the students in the program includes the requirement that the students be from minority and/or low-income families and be residents of The City of San Diego.

I have been informed that RETC's legal advisor is researching the appropriateness of the use of JTPA funds to benefit private companies. Therefore, I will not comment on that aspect of this program. However, the present criteria for selection of the students raises some concerns which cannot be completely addressed at this point because of the vague terminology utilized in the program. For example, the terms "minority youths" "disadvantaged minority youths" "minority students" "minority and/or low-income families" and "minority youths from low socioeconomic background" are used interchangeably throughout the material which you have provided this office.

If the intent of this program is to restrict the awarding of contracts to consultants based on participation in a program that give an advantage to any individual on the basis of race,

residency or any other suspect classification, it will be subject to challenge on constitutional grounds. Attached for your information are Opinions 83-3 and 84-4 of this office which address the constitutional issues which arise when the City or other governmental agency attempts to award contracts based on the race or residency of the employees of the contractor. Both opinions express the current state of the law. In addition, the United States Supreme Court in *United Bldg. and Constr. Trade v. Mayor*, 465 U.S. 208, 39 L.Ed.2d 249, 104 S.Ct. 1020 (1984) ruled that a residency requirement imposed on a construction contractor doing business with the city of Camden violated the Privileges and Immunity Clause of the Federal Constitution (art. IV, Sec. 2, clause 1).

There is no constitutional barrier prohibiting The City of San Diego from encouraging companies (or consultants) that do business with The City of San Diego to hire economically disadvantaged youths. Were that our objective, we could revise the proposed program to pass constitutional muster by deleting reference to race and residency. As presently conceived, however, the program is fraught with constitutional infirmities.

JOHN W. WITT, City Attorney

By

John M. Kaheny

Deputy City Attorney

JMK:smm:360(x043.2)

Enclosures

ML-85-80